

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1337**

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**Introduced by Assembly Member Linder**

February 27, 2015

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An act to amend Section 1158 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL’S DIGEST

AB 1337, as amended, Linder. Medical records: electronic delivery.

Existing law requires certain enumerated medical providers and medical employers to make a patient’s records available for inspection and copying by an attorney, or his or her representative, who presents a written authorization therefor, as specified.

This bill would require a medical provider or employer, or an agent thereof, to provide an electronic copy of a medical record, when an electronic a copy is requested, if the medical record exists in digital or electronic format and the medical record can be delivered electronically. *The bill would also require a medical provider or employer to accept a prescribed authorization form once completed and signed by the patient, as specified, and would prohibit a medical provider or employer from conditioning treatment, payment, enrollment, or eligibility for benefits on the submission of an authorization for the release of records.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1158 of the Evidence Code is amended to read:

1158. (a) Before the filing of any action or the appearance of a defendant in an action, *if* an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed ~~hospital~~, *hospital* shall, *upon presentation of the written authorization, promptly* make all of the patient's records under that person or entity's custody or control available for inspection and copying by the attorney at law or his or her ~~representative, promptly upon the presentation of the written authorization.~~ *representative.*

(b) Copying of medical records shall not be performed by any medical provider or employer described in subdivision (a), or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.

(c) Failure to make the records available during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.

(d) (1) All reasonable costs incurred by any person or entity described in subdivision (a) in making patient records available pursuant to this section may be charged against the person whose written authorization required the availability of the records.

(2) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10)

per page for standard reproduction of documents of a size 8 ½ by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversized documents or the reproduction of documents requiring special processing which are made in response to an authorization; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars (\$16) per hour per person, computed on the basis of four dollars (\$4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person.

(e) If the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, the only fee for complying with the authorization shall not exceed fifteen dollars (\$15), plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person.

(f) If an electronic copy of a medical record is requested, the medical provider or employer described in subdivision (a), or an agent thereof, shall provide an electronic copy of the requested medical record if the medical record exists in a digital or electronic format that can be delivered electronically.

(g) (1) *A medical provider or employer described in subdivision (a) shall not condition treatment, payment, enrollment, or eligibility for benefits on the submission of an authorization form pursuant to subdivision (a).*

(2) *A medical provider or employer described in subdivision (a) shall accept a signed and completed authorization form for the disclosure of health information that is in substantially the following form:*

**AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION  
PURSUANT TO EVIDENCE CODE SECTION 1158**

*The undersigned authorizes the medical provider or employer designated below to disclose specified medical records to a designated recipient. The medical provider or employer shall not condition treatment, payment, enrollment, or eligibility for benefits on the submission of this authorization.*

*Medical provider or employer: \_\_\_\_\_*

1    *Patient name:* \_\_\_\_\_  
2    *Medical record number:* \_\_\_\_\_  
3    *Date of birth:* \_\_\_\_\_  
4    *Address:* \_\_\_\_\_  
5    *Telephone number:* \_\_\_\_\_  
6    *Email:* \_\_\_\_\_  
7  
8    *Recipient name:* \_\_\_\_\_  
9    *Recipient address:* \_\_\_\_\_  
10   *Recipient telephone number:* \_\_\_\_\_  
11   *Recipient email:* \_\_\_\_\_  
12  
13   *Health information requested (check all that apply):*  
14   ☐ *Records dated from \_\_\_\_\_ to \_\_\_\_\_.*  
15   ☐ *Radiology records: \_\_\_\_\_ images or films \_\_\_\_\_ reports.*  
16   ☐ *Laboratory results dated from \_\_\_\_\_ to \_\_\_\_\_.*  
17   ☐ *All records.*  
18   ☐ *Records related to a specific injury, treatment, or other purpose (specify):*  
19   \_\_\_\_\_  
20  
21   *Note: records may include information related to mental health, alcohol or*  
22   *drug use, and HIV or AIDS. However, treatment records from mental health*  
23   *and alcohol or drug departments and results of HIV tests will not be disclosed*  
24   *unless specifically requested (check all that apply):*  
25  
26   ☐ *Mental health records dated from \_\_\_\_\_ to \_\_\_\_\_.*  
27   ☐ *Alcohol or drug records dated from \_\_\_\_\_ to \_\_\_\_\_.*  
28   ☐ *HIV test results dated from \_\_\_\_\_ to \_\_\_\_\_.*  
29  
30   *Method of delivery of requested records:*  
31   ☐ *Mail*  
32   ☐ *Pick up*  
33   ☐ *Electronic delivery*  
34  
35   *This authorization is effective for one year from the date of the signature*  
36   *unless a different date is specified here: \_\_\_\_\_.*  
37  
38   *This authorization may be revoked upon written request, but any revocation*  
39   *will not apply to information disclosed before receipt of the written request.*  
40

*Notice: Once the requested health information is disclosed, any disclosure of the information by the recipient may no longer be protected under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).*

Print name: \_\_\_\_\_

\_\_\_\_Beneficiary or personal representative of deceased patient.